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**U.S. Citizenship
and Immigration
Services**

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B5

[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

MAY 25 2006

SRC 05 211 50622

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

PETITION:

Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

[Signature]

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the decision on September 29, 2005. The director properly gave notice to the petitioner that it had 33 days to file the appeal. The director received the appeal on November 2, 2005, 34 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director erroneously annotated the appeal as timely and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

We note that, on appeal, counsel specified that he was “not submitting a separate brief or evidence,” and therefore counsel’s 48-word statement on the appeal form constitutes the entire appeal. The appeal consists only of the general assertion that the director’s decision “is against the applicable law and evidence.” The appeal contains no substantive arguments (for example, a discussion of the “applicable law” and an explanation of how the denial is said to violate that law). Therefore, even if the director had received the appeal within 33 days, the appeal would have been summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v).

We further note that, on December 22, 2005, the petitioner filed a new petition on the beneficiary’s behalf. The petition, with receipt number SRC 06 065 50909, sought a different immigrant classification for the beneficiary. This new petition was approved on January 4, 2006. Thus, the alien beneficiary in this proceeding is already the beneficiary of an approved immigrant visa petition.

ORDER: The appeal is rejected.